TRANSLATION
FROM FRENCH TO ENGLISH

ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Final Report of the Acting Chairman

Royal Canadian Mounted Police Act

Part VII
Subsection 45.46(3)

Complainant: André Simard

August 1991

File: 2000-PCC-89520

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Final Report of the Acting Chairman

I. INTRODUCTION

i) The procedure

Part VII of the Royal Canadian Mounted Police Act states that any member of the public may make a complaint concerning the conduct of any member of the RCMP (the "Force") or other person employed under the authority of the Act if this conduct is associated with the performance of any duty or function under the Act. The RCMP has the initial responsibility for investigating the complaint and responding to it. When a complainant is not satisfied with the disposition of the complaint by the Force, he may refer it to the Commission for review. Upon review of the complaint, if the Commission Chairman is not satisfied with the manner in which the Force disposed of the complaint or considers that further inquiry is warranted, he may, among other things, institute a hearing to inquire into the complaint. In this case, the Chairman must assign the member or members of the Commission to conduct the hearing and send a notice in writing of the decision to institute a hearing to the Solicitor General of Canada, the Commissioner of the RCMP, the RCMP member(s) whose conduct is the subject-matter of the complaint and the complainant. One of the members assigned to the Commission must be the Commission member appointed for the contracting province in which the incident occurred.

Part VII of the Act further states that hearings are to be public. During this hearing, the complainant, the person who is the subject-matter of the complaint, and the RCMP, through its appropriate officer, have the right to be heard either in person or through counsel. They are entitled to present evidence, cross-examine witnesses and make representations. Any person who convinces the Commission that he or she has a substantial and direct interest in the complaint also has the same rights.

On completion of the hearing, the Commission must send the Solicitor General and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as it sees fit. While this is an interim report according to the Act, the Commission feels that it must be accessible to all parties and to the public.

The RCMP Commissioner must subsequently review the complaint in light of the findings and recommendations set out in the report.

After reviewing the complaint, the Commissioner must notify the Solicitor General and the Commission Chairman in writing of any further action that has been or will be taken with respect to the complaint. Where the Commissioner decides not to act on any findings or recommendations set out

in the report, he must include in the notice the reasons for not so acting. After considering this notice, the Commission Chairman prepares and sends to the Minister, the Commissioner and the parties a final report in writing setting out such findings and recommendations with respect to the complaint as he sees fit. Like the report of the Commission, this report is accessible to the public.

ii) Background of the final report

On or around July 20, 1989, the complainant, André Simard, went to the RCMP detachment at 4225 René Lévesque Boulevard West to file complaints in accordance with paragraph 45.35(1)(b) of the Royal Canadian Mounted Police Act.

On October 17, 1989, the complainant, who was not satisfied with the disposition of his complaints by the Force, referred his complaints in writing to the Commission for review, in accordance with subsection 45.41(1) of the Act.

Each of the complaints was reviewed by the Commission Chairman who, not satisfied with the manner in which they had been disposed of, decided to institute a public hearing under paragraph 45.42(1)(c) of the Act. A three-member panel composed of Fernand Simard (Chairman), Gisèle Côté-Harper, QC, and Judith MacPherson was set up to inquire into the complaints.

On May 4, 1990, the Commission Chairman sent a notice to the Attorney General of Canada and the Attorney General of Quebec informing them that the following question would be debated at the hearing:

> Under current circumstances, does a member of the RCMP have the power to enforce provincial laws in Quebec?

The Commission invited the two attorneys general to take part in the debate. A notice was also given to the other parties involved, namely the RCMP member in question, the complainant and the appropriate officer.

The Attorney General of Canada and the Attorney General of Quebec made representations through their respective counsel, by submitting an application to this effect to the Commission.

The hearing was held in Montreal on June 26 and November 20, 1990.

The parties to the hearing were the complainant, André Simard, the RCMP member whose conduct was the subject-matter of the complaint, Paul-Emile Desautels, the RCMP itself through its appropriate officer and the attorneys general of Canada and Quebec. The Commission's report, dated May 11, 1991, was submitted to the Solicitor General of Canada and the RCMP Commissioner. On June 18, 1991, the RCMP Commissioner sent the Solicitor General of Canada and the Commission Chairman his written notice regarding the Commission's report, in which he indicated the additional action that would or should be taken with respect to the complaint.

This report is the Commission Chairman's final report, required under Part VII of the Royal Canadian Mounted Police Act. Appendix I contains a copy of the report of the Commission which conducted the hearing; Appendix II contains a copy of the Commissioner's notice, dated June 18, 1991.

II. COMMENTS AND CONCLUSIONS ON THE COMMISSIONER'S NOTICE

Below are the Commissioner's comments on the findings and recommendations of the Commission. For greater clarity, each paragraph or group of paragraphs contained in the notice has been reproduced, followed by my comments.

> With respect to the allegation of dangerous and careless driving on the part of Cst Paul-Emile Desautels, I share the finding that this allegation cannot be supported.
>
> In regards to the allegation of unlawful arrest, I find no evidence to suggest that Cst Desautels placed the complainant under arrest and therefore I agree with the finding that the complainant was detained by the member and was arrested by the SQ officers.

I have no comment to add to those of the Commissioner, as they are entirely in keeping with the observations and findings contained in the Commission panel's report.

> I accept the finding that the detention of the complainant by Cst Desautels was unlawful in this

> instance, as the member had no jurisdiction to enforce provincial statutes. I note this was admitted by counsel for the Attorney General of Canada and the representative of the appropriate officer.

Here again, the Commissioner's comments are entirely in keeping with the Commission panel's findings and I have no further comment to add.

> Concerning the allegation of a threat of violence in order to obtain documentation from the complainant, I note the PCC believes that the gesture was a demonstration of firmness on the part of the member, if made at all. I admit I have great difficulty in understanding the alleged threat. The Appropriate Officer explained it well in his final report in that the night-stick is inserted into its holder only after the police officer gets out of the vehicle. During this movement, it is not inconceivable that adjustments are made to various pieces of equipment carried on the belt before approaching a person. Therefore, I have reason to believe that the member was in the process of adjusting the night-stick on his belt rather than making the alleged threat. I share the remaining finding, in that the member did not have jurisdiction to enforce Quebec provincial statutes and did not have authority to ask the complainant for documents in this circumstance.

On reading the underlined sentence, the reader could be led to believe that the Commissioner was responding to a finding by the Commission panel that there could have been a threat by Constable Desautels in his gesture. However, it is clear from reading the Commission panel's report that the Commission panel did not draw any such conclusion. One need only refer to the pertinent passage on page 39 of the Commission's report:

> [translation]
> The Commission [panel] is undecided as to which version, that of Mr Simard or that or Constable Desautels, it should believe. Even if it sided with Mr Simard's version, it would

> nevertheless feel that this gesture prevented the situation from becoming more serious. Tempers were flaring. It was important above all that the situation not get more heated. Was there a threat of violence? The Commission [panel] rather believes that the gesture was a show of firmness, if indeed a gesture was made.

This having been said, the underlined sentence can also be interpreted as a remark by the Commissioner through which he hopes to convince the reader that, in his mind, there could not have been any threat by Constable Desautels. Does he not conclude that he is led to believe that the member adjusted his night-stick on his belt and that this gesture did not constitute a threat? All things considered, I believe that this last interpretation of the sentence is the most accurate.

As for the rest, the Commissioner shares the remaining finding of the Commission panel and I have nothing to add to this.

> In regards to the allegation of abuse of authority, I accept the finding that with respect to the member's conduct, no adverse findings came to light to indicate the member acted in bad faith. I note the member believed that he had jurisdiction and that he was entitled to stop a speeding car on a provincial road.

With respect to the Commissioner's acceptance of the Commission panel's observation, I also have nothing more to add.

> I accept recommendation 1, and I will instruct the CO, "C" Division, to ensure that a written apology is extended to the complainant. I will also instruct the CO, "C" Division, to ensure that Cst Desautels is encouraged to apologize. However, the ultimate decision will be left with the member, as an ordered apology would not be meaningful.
>
> I accept recommendation 2 and will instruct the Director of Enforcement Services to examine and review this issue and subsequently inform all

members of the Force of the legal situation which prevails in Quebec.

As well, I accept recommendation 3, and will instruct the Director of Enforcement Services to examine and review this issue and subsequently inform all members of the legal situation which prevails in any other province, territory or municipality where there is no contractual agreement between such province, territory or municipality and the federal government for the use of the services of the Force in such jurisdictions.

Since the issues identified are all directly related to the complaint, I accept recommendation 4 and will inform the Chairman of the PCC of the corrective measures taken by the Force.

I have noted the Commissioner's acceptance of the four recommendations of the Commission panel and find this entirely satisfactory.

I therefore have no findings or recommendations to present in this report and am entirely satisfied with the Commissioner's notice.

This report has been prepared by the acting Chairman as authorized under subsection 45.3(2) of the Royal Canadian Mounted Police Act.

Fernand Simard
Acting Chairman

OTTAWA, August 9, 1991

APPENDIX I

TRANSLATION
FROM FRENCH TO ENGLISH

ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act

Part VII
Subsection 45.45(14)

Public Hearing
Into the Complaints
of
André Simard

COMMISSION REPORT

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I. THE COMPLAINTS

On or about July 20, 1989, the complainant, André Simard, attended at the Royal Canadian Mounted Police detachment located at 4225 René Lévesque Boulevard West, Montreal, Quebec to file complaints under paragraph 45.35(1)(b) of the RCMP Act.

The complaints were made in writing and were filed as Exhibit P-4 at the public hearing held on June 26 and November 20, 1990. In his letter, the complainant described his version of an incident which took place on Wednesday, July 19, 1989. At about 5:00 pm he was driving west on Côte de Liesse Road, and was intercepted by a patrol car owned by the RCMP and driven by a member of the force.

From this letter, we shall extract the essential elements comprising the complaints filed against Constable Paul-Émile Desautels.

At page 3 of his letter addressed to Deputy Commissioner J.A.M. Breau, commanding officer of "C" Division, the complainant describes his complaints:

[Translation]

> I believe that the RCMP officer was guilty of the following offences, concerning which I wish to make a complaint:
>
> (a) dangerous and careless driving;
>
> (b) unlawful arrest;
>
> (c) unlawful detention;
>
> (d) threats of violence in order to obtain unlawfully, and unlawfully obtaining, my

> driving licence, my registration, and my insurance certificates;
>
> (e) abuse of power.

In his letter, the complainant notes that he said to Constable Desautels [Translation]: "that he still did not have the right to arrest and detain me, as he had done, since he had no jurisdiction over that territory." Given that he had no jurisdiction, he could not be considered to be acting in the execution of his duties and could not have been acting as a "peace officer".

II. PROCEEDINGS

Mr. Simard's complaints were considered in an investigation conducted by the RCMP, at the end of which the Commissioner sent to the complainant and to the member concerned a report signed by Superintendent G. Guay, Officer in charge, Administration and Personnel, "C" Division. This report was filed at the hearing as Exhibit P-12, and reads as follows:

[Translation]

> The investigation conducted into your complaint of last July 20 has now been completed.
>
> Each of the allegations which you have made in order to justify your complaint has been examined. These allegations were stated as follows:
>
> (a) dangerous and careless driving;
>
> (b) unlawful arrest;
>
> (c) unlawful detention;
>
> (d) threats of violence in order to obtain unlawfully, and unlawfully obtaining, my

driving licence, my registration and my insurance certificates;

(e) abuse of power.

After having heard the testimony of all the parties in this matter, it appears that at no time did you state the first four allegations in your complaint to the officers of the Sûreté du Québec. The SQ officers reported only that you insisted that our member had no jurisdiction and that you stated that this was the reason why you said you had refused to stop your vehicle.

Moreover, our member states that he had placed his nightstick in its sheath when leaving his vehicle, as provided by the guidelines, and denies having made any threatening gesture toward you with the nightstick.

We therefore have two contradictory versions of the facts, and there is nothing to corroborate either version. Accordingly we cannot conclude that our member is guilty and we therefore cannot uphold these allegations against him.

The allegation of abuse of power also cannot be upheld against him, since he did not exceed the powers conferred on him by sections 3, 9 and 18 of the RCMP Act.

With respect to the "no jurisdiction" situation in which our member found himself, we believe that he has such jurisdiction, and that he acted in such a manner as to give assistance to the SQ officers, and that in so doing he was simply doing his duty as a police officer.

However, under section 45.41 of the RCMP Act, if you are not satisfied with the manner in which your complaint has been handled, you may refer your complaint in writing to the RCMP Public Complaints Commission, PO Box 3423,

Station "D", Ottawa, Ontario, K1P 6L4, telephone
1 (800) 267-6637.

Yours truly,

Superintendent

(signed)

G Guay, Supt
Officer in charge
Administration and Personnel
"C" Division

The complainant was not satisfied with the disposition of his complaints by the Royal Canadian Mounted Police, and on October 17, 1989 he referred them in writing to the Commission for review pursuant to the provisions of subsection 45.41(1) of the Act.

The Chairman of the Commission considered each of the complaints and not being satisfied with their disposition, he decided to institute a public hearing under paragraph 45.42(1)(c) of the Act. A panel of three members was appointed to hear the case. The Act provides that this panel becomes the Commission.

On May 4, 1990, the Commission sent a notice signed by the Chairman of the panel informing the Attorney General of Canada and the Attorney General of Quebec that the following issue would be argued at the hearing of this complaint:

[Translation]

> Is it the case that a member of the RCMP has the power to enforce provincial legislation in Quebec?

The Commission invited the two Attorneys General to intervene. This notice was also served on the other parties: the RCMP member, the complainant and the appropriate officer.

The Attorney General of Canada and the Attorney General of Quebec respectively, intervened and their interventions were granted without objection from the other parties.

III. THE FACTS

Testimony of André Simard

Between 4:30 and 5:00 p.m. on Thursday, July 19, 1989, Mr. Simard was driving west on Côte de Liesse Road. Just west of highway 13, he noticed an RCMP patrol car driving on the service road. The patrol car was attempting to get onto Côte de Liesse Road, westbound. The two drivers looked at each other. The complainant did not yield the right of way to the patrol car, which had to slow down before moving onto Côte de Liesse Road. The complainant then noticed that the patrol car positioned itself directly behind his vehicle. Each time the complainant changed lanes, he was followed very closely by the vehicle driven by Constable Desautels.

At some point, the complainant saw a Sûreté du Québec patrol car which had pulled over two vehicles. The three were stopped on the shoulder on the right-hand side. The complainant continued on his way. Suddenly he noticed that the patrol vehicle's flashers* were on. He pulled over a little

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* Mr Simard stated on cross-examination that in fact it was the red and blue revolving lights on the roof of the vehicle which were on.

and motioned to the driver of the patrol vehicle to "pass". The police officer motioned with his finger meaning, according to the complainant, "you're the one I want". And the complainant stopped his vehicle on a grassy area.

The two drivers got out of their vehicles. The police officer asked the complainant to give him his driver's licence and the registration for his vehicle. The complainant replied that the police officer had no jurisdiction at that location; that he had no right to demand that his papers be produced; and moreover that he had no right to stop him.

The police officer allegedly then put his hand on "his nightstick" and pulled it at least three inches from its sheath. Mr. Simard produced the documents requested and returned to his vehicle. After waiting ten minutes, Mr. Simard went back to the patrol car and told the police officer that he was expected at an opening ceremony and requested that he give him his ticket.

The constable ordered him to return to his vehicle and wait. Ten or fifteen minutes later, three Sûreté du Québec cars arrived on the scene, but only one remained.

One of the SQ officers asked the complainant to follow him to his car so that a statement could be taken from him. The complainant complied with this request and got into the rear seat of the car. He was then informed that he was under arrest for refusing to obey a peace officer and obstructing justice.

The complainant identified himself as a lawyer and the Sûreté du Québec officers released him without issuing a ticket. However, a week later, he

received a ticket in the mail charging him with an offence under the Highway Safety Code. (Exhibit P-2)

When examined by Mr. Morin, Mr. Simard admitted that he was going over the speed permitted on Côte de Liesse Road. However, he added that everyone was driving faster than the permitted speed. He was moving with the traffic. Mr. Simard also noted that when he saw the RCMP patrol car leaving the service road to pull into the traffic on Côte de Liesse Road, the driver failed to signal his intention to turn left into the traffic. Given the failure to signal, Mr. Simard had no intention of allowing him room to pass.

Mr. Simard further clarified that it was the Sûreté du Québec officers who had told him he was under arrest.

In response to a question asked by the Chairman concerning the nightstick which had been pullled about three inches from its sheath, Mr. Simard stated that this had occurred at the same time as the police officer stated his request [Translation]: "Are you going to give me your papers or not?"

Testimony of Constable Desautels

Constable Desautels stated that he has been employed by the Royal Canadian Mounted Police for 20 years. From December 17, 1973 to May 31, 1990, he was posted to the Dorval detachment at Dorval airport.

When questioned by counsel for the Commission, Constable Desautels described his duties:

[Translation]

> Q. What percentage of work in terms of other responsibilities ... I don't want to get into details, constable, but

supervision of the roads around the airport occupied how much of your time, in percentages?

A. About 20 to 30 per cent of our time is on the roads.

Q. And that, I take that to mean the actual territory of Dorval Airport?

A. Yes, going all around the airport.

Q. And so federal territory, land belonging to the federal government.

A. Land, roads, Côte de Liesse, Montée de Liesse, Montée des Sources, which follow the provincial and municipal roads, all around.

Q. Do you have a written mandate from the RCMP to supervise the roads? Where do you get your mandate?

A. That is part of our duties.

Q. The duties are described where, Constable?

A. We have written orders and it is stated in them that we must enforce provincial, municipal and federal legislation.

Q. When you say "orders", are you referring to the RCMP Act and Regulations?

A. The airport traffic Regulations (Government Property Traffic Regulations, the regulations relating to traffic control, motor vehicles, pedestrians, aircraft and equipment at airports). The airport traffic Regulations say that we are to enforce provincial and

> municipal regulations or other related legislation, depending on the province we are in.

Constable Desautels added that during recruit training in Regina, Saskatchewan, they are taught that they must help other police forces, give them assistance: [Translation] "And so from that point on, when we arrive in a contracting province or otherwise, we are to enforce the regulations in effect in the province where we happen to be assigned".

When questioned on this subject, Constable Desautels was not able to say whether the provinces of Ontario and Quebec are contracting provinces.

Using a sketch (Exhibit 1) the witness explained that on July 19, 1989, he was driving west on the Côte de Liesse service road.

While he was driving on the service road, he saw two vehicles go by at high speed, followed by a Sûreté du Québec vehicle. He then saw Mr. Simard's vehicle.

The constable stated that he increased his speed to 120 km/h and came side by side with the vehicle driven by the complainant, but that he had to slow down before entering Côte de Liesse Road to avoid hitting Mr. Simard's vehicle.

The constable testified as follows:

[Translation]

> I wondered whether that vehicle had been involved in either a leaving the scene or something and then the Sûreté du Québec was chasing the other two vehicles for that reason or something.

To summarize, Constable Desautels described the manoeuvres he undertook to intercept the vehicle driven by the complainant. He left the service road, pulled onto Côte de Liesse Road, positioned himself behind the complainant's vehicle, and followed him at a distance of 18 to 20 feet; the complainant's vehicle slowed down and then increased its speed. The constable decided to put on his revolving lights. He explained this as follows:

[Translation]

> A. Because I observed that Mr. Simard was exceeding the speed limit and, really, he was continuing to commit the offence, despite ...
>
> Q. He had been exceeding the speed limit, according to you, since the Côte de Liesse service on-ramp?
>
> A. That's right.
>
> Q. But why did you suddenly decide?
>
> A. Because I had enough evidence at that point to go to court on the ticket.

In response to a question by counsel for the Commission concerning the constable's motives for staying behind the complainant's vehicle every time the complainant changed lanes, he replied:

[Translation]

> Sir, that is how they showed us to drive defensively, and the way they showed us in Regina during training to intercept vehicles and get our evidence, and that is how I was taught to drive by the RCMP.

The constable explained to us that before intercepting the complainant's vehicle he activated his revolving lights and siren, and motioned to him to pull over, the complainant looked at him, looked away, and continued on his way. The witness added that he twice signaled the complainant to pull over, and the complainant refused and even increased his speed to 140 km/h.

Finally, the constable succeeded in getting the complainant to slow down and stop. After the interception, the constable got out of his vehicle, put his nightstick in its sheath, adjusted his hat and went toward the complainant. Words were then exchanged between them. The constable's testimony corroborated the complainant's testimony in part, in that the complainant had told him he "didn't have" to provide his driver's licence and vehicle registration as requested by the constable, but nonetheless he handed them over. The constable returned to his vehicle and asked for assistance from the Sûreté du Québec to issue a ticket. He requested such assistance because, as he himself stated, he was on "their turf". If the offence had been committed "on municipal territory" he would have called the municipal police. Then, once the SQ officers were on the scene, Constable Desautels gave his notes to Officer Boisvert of the SQ (Exhibit P-5) with the ticket he had written up.

When questioned by his counsel, Constable Desautels explained that in certain circumstances the RCMP gives assistance to other police forces such as, for example, the Sûreté du Québec or other municipal police forces.

Q. Can you explain, so that the members of the Commission will clearly understand, what you, your colleagues and yourself, mean by "assistance"? First I understand that it is an anglicism which is translated from ...

A. What we understand by "assistance" is that, if we see an offence being committed on the territory of either the MUC or Côte de Liesse, Sûreté du Québec, or another territory, we take action as a police officer, first. So if we see ... well, I don't know ... a break and enter, a fight or whatever, something out of the ordinary, as the first respondent, we take action.

Secondly, with our RCMP powers, peace officers, we detain if we have to detain, and we call the force concerned, either municipal or provincial, which has jurisdiction to lay charges at that point to respond to the situation.

Later, the witness stated in response to a question by his counsel:

Q. Should I understand from your testimony that on July 19, 1989, when you observed the facts, to which I'll come back a little later, involving Mr. Simard, the complainant, that you took action of that sort?

A. That's right.

Referring to Exhibit P-5 (the ticket he issued), Constable Desautels explained that this document is an aide-mémoire and not a notice of a violation. This aide-mémoire, according to Constable Desautels, was to be used for the purposes of court proceedings, if necessary.

Constable Desautels then produced his incident report (Exhibit P-6). This is a report which he is required to write and submit to the authorities at the detachment to which he belongs. On reading the report, we find the following entry in the box entitled "details of the incident":

[Translation]

"Excessive speed and refusing to stop."

Continuing with his narration, Constable Desautels explained that he went to the Sûreté du Québec station and filled out a statutory declaration in which he described the events which had occurred.

Constable Desautels explained why he had decided to intercept the vehicle driven by the complainant:

[Translation]

A. Briefly, the way he was driving behind the people from the Sûreté du Québec, I was wondering, because at one point, when ... then, when the SQ guys put their revolving lights on, he dropped back as if he were afraid of them or something. So I figured that maybe he had something to hide or whatever. That's why I decided to intervene and pursue him.

At the request of the tribunal, the witness clarified:

> Q. At that point, when you saw Mr. Simard's vehicle, to your knowledge, had the Sûreté du Québec detachment asked for assistance from the RCMP detachment in that case?
>
> A. No.

The tribunal continued:

> Q. And so, in this case ... and I do not wish to cross-examine; I want this to be direct examination ... what was your assessment of the situation?
>
> A. That Mr. Simard had exceeded the speed limit in his vehicle.

The witness explained to the tribunal the reasons why he had included the notation "refusal to stop" in his report (Exhibit P-6). His testimony was that he had twice indicated to Mr. Simard to stop, and then, given his failure to do so, he had to "run him off" to force him to stop. This was his explanation to Officer Boisvert of the Sûreté du Québec. It was up to the SQ officers to decide what the description of the violation would be. However, Constable Desautels would then be called to testify if the case went to court.

Testimony of Staff Sergeant Gaston Pichette

Staff Sergeant Gaston Pichette is in charge of operations at the Dorval RCMP detachment. When the incidents occurred, he was in charge of the

airport section and in this capacity was Constable Desautels' immediate superior.

The Staff Sergeant explained to the tribunal the procedure to be followed when a ticket is issued and the manner in which such a ticket is dealt with. In the circumstances involving the complainant, he himself cancelled the ticket and any other court proceedings because issuance of the ticket resulted from an administrative error on the part of personnel working in the detachment. The witness further stated that there was no written agreement between the Sûreté du Québec, the Montreal municipal police and the RCMP which would permit the RCMP to enforce the Highway Safety Code on provincial roads around the Dorval International Airport. He added that, rather, there was what seemed to be a verbal "mutual assistance" agreement.

When questioned by Mr. Carbonneau, the witness stated that, in his view, Constable Desautels had been guilty of no error, whether administrative or operational, during the incident in question.

Testimony of Gérard Roberge

At the time of the incidents, Mr. Roberge was in charge of operations at the Montreal-Metro station of the Sûreté du Québec. He corroborated Staff Sergeant Pichette's testimony to the effect that there was no written agreement between the RCMP and the Sûreté du Québec authorizing members of the RCMP to enforce provincial legislation, and specifically the Highway Safety Code. Mr. Roberge explained that a file "was opened" by the Sûreté du Québec with respect to a violation of the Highway Safety Code and obstructing a peace officer. Mr. Roberge was not aware of any

written or verbal agreements that might exist between the Sûreté du Québec and the RCMP relating to any authorization given to RCMP constables to enforce provincial legislation, or more particularly the Highway Safety Code. Moreover, according to him, the RCMP has jurisdiction throughout Canada, and a police officer from any body, be it federal, provincial or municipal, has the duty to intervene when he or she sees an offence being committed.

Mr. Gilbert and Staff Sergeant Pichette discussed the case, but according to Mr. Gilbert this was not a problem case. There was nothing abnormal.

With respect to the charge of obstructing justice which was brought against Mr. Simard, Mr. Gilbert explained that the facts had been brought to the attention of the Crown Attorney, who had concluded that there was no ground for proceeding with a charge of obstructing justice against Mr. Simard.

Testimony of Officer Boisvert

Officer Boisvert told the Commission that as a result of a request for assistance from the Dorval RCMP he went on Côte de Liesse Road westbound, at the top of the Dorval traffic circle, to assist a police officer, this being Constable Desautels who, he said, had just intercepted a vehicle. Officer Boisvert, who was accompanied by Sergeant Saulnier, approached Constable Desautels to find out what was happening.

After speaking with Constable Desautels, he concluded that Mr. Simard's action in refusing to hand over his papers in the first place very definitely amounted to obstruction.

The two officers then went to the SQ vehicle with Mr. Simard. They asked him to sit in the rear seat. According to Officer Boisvert, Mr. Simard seemed nervous, but he was also in a hurry. When asked to make a statement, Mr. Simard refused. Mr. Simard indicated to Officer Boisvert that in his opinion the RCMP had no jurisdiction to arrest him.

Testimony of Sergeant Saulnier

Sergeant Saulnier was accompanying Officer Boisvert. When they arrived on the scene, Officer Boisvert approached Mr. Simard, who explained that he was driving on Côte de Liesse Road and that Constable Desautels had tried to run him off.

Sergeant Saulnier also recalled that Mr. Simard had asserted that Constable Desautels had no jurisdiction on that highway.

Once he was in the rear seat, Mr. Simard was informed by Officer Boisvert that he was under arrest for obstruction. The two police officers kept Mr. Simard in the patrol vehicle for a period of 10 to 15 minutes.
Sergeant Saulnier was the person who wrote up Exhibit P-2.

When this testimony concluded, the hearing was adjourned until November 20, 1990.

At the beginning of the next sitting, Commission counsel, Mr. Noël, informed the tribunal that he had been in contact with the other counsel and that they were all agreed that a notice of expropriation dated May 8, 1963, filed at the Montreal registry office, along with a map of Côte de Liesse and the surrounding area, would be filed in evidence, as Exhibit P-8.

When this had been filed, the Chairman of the panel wanted to know whether any conclusions could be drawn as to whether Côte de Liesse Road was in fact a provincial highway.

Mr. Provost, representing the Attorney General of Quebec, was able to confirm that it was in fact a provincial highway. On the other hand, if it is true that the roadbed, or the underlying land on which the highway is built, belongs to the various municipalities the highway may go through, we must conclude, according to Mr. Provost, that the place on the highway where the incident took place is administered by the provincial government and belongs to the provincial government. All the other counsel stated that they were in agreement with Mr. Provost.

This being the case, Mr. Noël called the next witness, Jean-Marc Bousquet.

Testimony of Jean-Marc Bousquet

Mr. Bousquet, of the Sûreté du Québec, told the tribunal that between 4 and 5 p.m. on July 19, 1989, he was driving on Autoroute 520** and at 5:05 p.m. on that autoroute he intercepted a vehicle which was driving at 100 km/h in a 70 km/h zone. He was also asked to produce an offence report, which was received by the Commission and filed as Exhibit P-9.

The vehicle in question was a 1981 Chrysler LSC.

Mr. Noël then called Guy Lesage.

** The Commission takes judicial notice of the fact that Autoroute 520 is also known as Côte de Liesse.

Testimony of Guy Lesage

Mr. Lesage informed the Commission that at about 5 p.m. he was in the vicinity of Côte de Liesse Road and that he made an arrest at about 5:05 p.m. The vehicle in question was a Volkswagen. Mr. Lesage was in the same car as Mr. Bousquet.

Mr. Lesage explained that this was actually a double interception and that the two vehicles were driving at a speed of 100 km/h in a zone where the speed limit was set at 70 km/h. Notices of violations were introduced through this witness and filed together as Exhibits P-9 and P-9(a).

Mr. André Simard then called Louis R. Dennoncourt.

Testimony of Mr. Dennoncourt

Mr. Dennoncourt is a civil engineer who specializes in the area of roadway transportation and mechanical engineering.

Using as his basic data the information provided by Constable Desautels as to the distance that had been travelled in stopping Mr. Simard's vehicle, that is, .04 kilometre at a speed of 120 km/h, the witness was able to conclude that the time needed to cover this distance was 12 seconds. We know, according to Constable Desautels, that his interception of Mr. Simard's vehicle took 4 or 5 seconds. To obtain this result, according to Mr. Dennoncourt's testimony, the police vehicle would have had to be able to accelerate from 0 to 100 km/h in 5 seconds. This type of performance is found only in the Porsche 911 Turbo, or the Corvette Twin Turbo. The pursuing vehicle would also have had to be travelling at a speed of

240 km/h. Moreover, in order to judge the speed of the vehicle pursued, the pursuing vehicle would have had to apply the brakes to decelerate from 240 to 120 km/h in almost no space. If we consider the same factors, it would be like decelerating from 120 km/h to 0 in a few metres, which is physically impossible.

There was then argument as to what the relevance and impact of this testimony might be in the case. Following argument, the Chairman of the panel adjourned the hearing for a few minutes.

Upon resuming, Mr. Carbonneau stated that he was satisfied that he did not have to call a witness in reply to Mr. Dennoncourt's testimony. Mr. Noël stated that he had no further witnesses to call.

Having said this, Mr. Noël advised the panel that he had received a letter dated November 8, 1990 from André L'Espérance, the representative of the Attorney General of Canada, which he wished to place in evidence. The letter was accepted and filed as Exhibit P-10. It was a letter addressed to Mr. McCombs, one of the counsel representing the appropriate officer in this case.

Mr. L'Espérance summarized the content of the letter, stating that in his opinion it was clear that members of the RCMP cannot enforce a provincial statute in Quebec unless that statute gives them such jurisdiction. However, in the letter he dealt more specifically with the Highway Safety Code which, according to him, could not be enforced by a member of the RCMP unless there were express provision in the Code to that effect, which there is not.

Mr. Noël did the same thing with respect to another letter signed by André Morin and Mark McCombs, counsel for the appropriate officer in this case. That letter, dated November 19, 1990, was filed as Exhibit P-11.

Mr. Morin explained to the Commission that he was of the same opinion as Mr. L'Espérance, that is, that a member of the RCMP has no jurisdiction to enforce the Quebec Highway Safety Code. Mr. Morin added that there was no reason here to invoke the powers as a peace officer which a member of the RCMP might have when the issue involved preventing a breach of the peace.

The Chairman then asked Mr. Morin to explain to him whether a special constable, as Constable Desautels had previously been, had to take a training course before becoming a constable. Mr. Morin could not answer this question. However, he suggested that one of the two RCMP division representatives who were at the hearing could provide further information on that point. André Girard was then sworn.

Testimony of André Girard

Mr. Girard informed the Commission that he is a labour relations adviser to the members of "C" Division. As such, he sits on grievance and promotion committees. It is therefore part of his job to act as adviser with respect to the preparation of grievances which members of the RCMP may want to file relating to their terms and conditions of work.

He explained that before regular members may work as police officers they must take a six-month training course. Special constables are also assigned to very specific tasks, such as working in international airports or

on surveillance, and various other specific positions. With the advent of the new RCMP Act, they are no longer called special constables, but rather special members. When the new Act was passed, the RCMP offered special constables the opportunity to become constables. However, in order to do so, they had to receive additional training. The witness testified that to the best of his knowledge, Constable Desautels had received the necessary training to become a constable.

The Chairman also wanted to know whether in this training the difference between their duties and obligations in a "contract" province*** and in a non-contract province, such as Quebec, is explained to them. The witness had trouble answering this question. He did explain that there were standing orders informing members of the tasks they were to perform in the positions to which they were assigned.

With respect to the question of whether a constable coming to Quebec received an explanation of his or her powers with respect to enforcing provincial legislation, the witness stated that members of the RCMP throughout Canada are under the impression that they have jurisdiction nation-wide, and so they would have the power to enforce the law anywhere in the country.

After hearing the witness's explanation, the Commission wished to know very precisely whether recruits in Regina were told what the distinctions are in terms of enforcing the law in contract provinces and in non-contract provinces, Quebec for one.

*** A province which retains the services of the RCMP under a contract with the federal government, to perform the work of the provincial police.

Mr. Morin indicated that the RCMP had approached the academy in Regina to ensure that there would be specific instruction given as to what the role of the RCMP is in terms of law enforcement in this province. This information will now be part of the course given to recruits in Regina.

IV. SUBMISSIONS

By way of preamble, Mr. Noël stated that this case raised an important question of jurisdiction. According to all the police officers who appeared before the Commission, there are arrangements or agreements between the Sûreté du Québec, the RCMP and even the Montreal Urban Community (MUC) police respecting law enforcement. These agreements are neither documented nor signed.

Moreover, it is clear that the Commission should inform the various Attorneys General that if it is intended that an RCMP constable be given the powers of a peace officer with respect to provincial legislation in Quebec, this should be done by means of a properly executed administrative agreement.

The Commission will also have to make recommendations clarifying what the powers of a member of the RCMP are with respect to law enforcement in Quebec.

Since the parties were in agreement as to the order in which counsel would proceed, Mr. Simard presented his argument first.

After explaining that he had never had any problems with the police, Mr. Simard stated that he had filed the complaint because, in his view, he

had been subjected to police abuse, and he came to this Commission in order that it might tell Canadians and perhaps the entire world that police abuse is not tolerated in Canada. In his opinion, the question he had raised with Superintendent Breau when he initiated his complaint could have been resolved very easily. The fact that he had had to turn to the Commission led him to conclude that police forces are incapable of self-discipline. Rather, they will protect themselves - witness the arsenal deployed before the Commission: two counsel for the RCMP and another representing Constable Desautels.

According to him, the RCMP has jurisdiction in a province of Canada, under section 20 of the RCMP Act and section 17 of the RCMP Regulations, on condition that there is an arrangement or agreement to this effect at the Ministerial level, or an Act has been passed by the legislature of the province giving the RCMP the power to enforce provincial legislation.

Again according to him, the Commission must resist the argument that there is common law authority for a police officer to act as a peace officer whatever the provincial jurisdiction may be.

He also objected to the arguments that various parties tried to make concerning the obligation that police officers felt they had to lend assistance to other police officers in the performance of their duties. Mr. Simard noted that the examples that were given during the presentation of evidence to illustrate this principle of mutual assistance all related to situations involving offences under the Criminal Code. It is clear that enforcing the Quebec Highway Safety Code is a far cry from the Criminal Code.

He then alluded to Mr. Dennoncourt's testimony to prove that Constable Desautels's version of what had happened on Côte de Liesse Road fared poorly when put to the test of truth.

According to Mr. Simard, the evidence disclosed that there had in fact been an unlawful arrest and unlawful detention. The evidence also disclosed that there had been a threat of violence for the purpose of obtaining his papers.

The complaints should therefore be upheld.

In response to a question by the Commission, Mr. Simard replied that, in his view, he had been detained by Constable Desautels in an entirely unlawful manner. The facts, which were not denied by Constable Desautels, showed that he was forced to remain on the scene and was unable to leave since Constable Desautels had his papers, the automobile registration and his driver's licence. According to Mr. Simard, it was clear that the facts in evidence showing that he had been restricted in his movements were on all fours with the definition of what constitutes detention given by the Supreme Court.

The Commission then wanted to know Mr. Simard's reaction to the position taken by Constable Desautels, who said that according to what he had been taught he was a peace officer and therefore had jurisdiction to enforce all provincial and municipal legislation throughout Canada. Mr. Simard replied [Translation], "perhaps on the operational level, in terms of his relationship with his employers, he is excusable as an individual. But in terms of the laws we are governed by, he is not excusable." Moreover, police officers must know what the law is, because it is their job to enforce

it. Mr. Simard added, "if the police do not know what the legislation and regulations are, then who does know?"

Mr. Carbonneau was invited to give his point of view on behalf of Constable Desautels.

To start with, Mr. Carbonneau noted certain errors in the version of the facts related by Mr. Simard, comparing them with the versions given by the other witnesses who had testified.

Mr. Simard saw three provincial police patrol vehicles going to the scene of the incident, while according to the constable and the other police officers there was only one.

Mr. Simard claims that he was following traffic at 80 to 90 km/h while the SQ officers indicated that they had stopped two other vehicles which were driving at at least 100 km/h. From all appearances, Constable Desautels was correct in believing that Mr. Simard was driving at an excessive speed.

Mr. Carbonneau also noted that if Mr. Simard had felt threatened by Constable Desautels, his first reaction would have been to tell this to the SQ officers when they arrived on the scene of the incident, but he did nothing.

He then analyzed Constable Desautels' reaction to what he saw, that is, an SQ vehicle pursuing vehicles going at an excessive speed and another vehicle following, a few cars back, at a speed just as excessive as the others. The constable's reaction was [Translation] "might that vehicle have been involved in a criminal offence, in a hit and run?" Constable Desautels was still on his normal working territory. According to him, the constable

had no personal interest in intercepting that vehicle, given the circumstances.

Counsel then alluded to the de facto agreements which exist among police officers. He then referred to the testimony of the division representative, Mr. Gilbert, which demonstrated that Constable Desautels acted in good faith and sincerely believed that he had jurisdiction to undertake the pursuit and intercept Mr. Simard's vehicle.

Mr. Carbonneau then referred to the airport traffic regulations, which apply to the airport premises which these constables are required to patrol. These regulations refer to municipal, provincial and federal regulations on airport land. They refer not only to airports, but also to land where constables have jurisdiction. Finally, Mr. Carbonneau added, what is striking is that they ask constables to [Translation] "distinguish between their jurisdiction as a federal officer and as a provincial or municipal officer, which they are not [in reality] but which they are more or less taught to be".

He alluded briefly to the calculation testified to by Mr. Dennoncourt, in respect of which counsel asked us to check, at page 163 of the transcript, and note that Constable Desautels did not stop Mr. Simard over a distance of .04 kilometres, but rather over a distance of 1 kilometre. Clearly this obviates the calculation submitted in evidence.

Finally, Mr. Carbonneau emphasized to the Commission that it was not its role to redo the internal investigation which had already been conducted into the actions of Constable Desautels. Its role is rather to make recommendations to improve the public's understanding of the various police forces working, for example, at Dorval. Constable Desautels did not

conduct himself in a dangerous manner in following Mr. Simard. He simply acted according to the rules that had been instilled into him by the RCMP in circumstances of this sort. If he had done otherwise, he could have been subject to disciplinary proceedings.

Mr. Carbonneau then took exception to the fact that his colleague Mr. L'Espérance, representing the Attorney General of Canada, did not wish to make submissions, on behalf of the appropriate officer, in respect of the common law and the powers that Constable Desautels might have had at common law in the circumstances of this incident. Reviewing the evidence, and the reasoning applied by Constable Desautels when he saw Mr. Simard's BMW for the first time, it is clear that he might have had reason to believe that Mr. Simard was leaving the scene of an accident, perhaps, an offence that falls under the Criminal Code. This led Mr. Carbonneau to submit that Constable Desautels' primary intention was to pursue the BMW not for exceeding the speed limit, but rather for what might have been a criminal offence. In this respect, the constable did indeed have jurisdiction to pursue and ultimately arrest the driver of the BMW.

Mr. Carbonneau then referred to the decision in Dedman v. The Queen, [1985] 2 SCR 2, in which it was held that the police could, for no reason whatsoever, other than the protection of the public against drunk driving, put up road blocks, stop people at random and detain them to determine whether they were intoxicated.

According to Mr. Carbonneau, there is nothing in the Highway Safety Code or any other Quebec or Canadian statute which extinguishes the powers a

police officer may have at common law under the Dedman and Ladouceur**** decisions.

In closing, Mr. Carbonneau asked the Commission to make recommendations to attempt to clarify matters for people who are involved in a situation where there may be jurisdictional problems in the execution of police responsibilities.

The Commission wanted to know Mr. Carbonneau's views on sections 45.41 et seq of the RCMP Act with respect to the handling of the complaints by the Commission. This question arose in the context of Mr. Carbonneau's claims that it is not the Commission's role to redo the internal investigation which was conducted into the actions of Constable Desautels in the incident which is in issue here. In the view of the Commission, given the procedures established by Parliament in Part VII of the Act, it is clear that the Commission could be asked to redo the investigation. Mr. Carbonneau replied that the role of the Commission is not to redo the investigation if it was done properly.

The Commission then invited Mr. Morin to state his position.

In reviewing the evidence, Mr. Morin asserted that, contrary to Mr. Simard's arguments, when Constable Desautels engaged in the chase he did not do so in a dangerous or careless manner.

Mr. Morin then dealt with complaints numbered 2 and 3, in which it was claimed that Constable Desautels effected an unlawful arrest and detention.

**** R v. Ladouceur, [1990] 1 SCR 1257.

Mr. Morin added that we must not confuse the two expressions. He stated that when Constable Desautels pursued and finally intercepted Mr. Simard, it was for a criminal offence. According to Mr. Morin, there was no evidence at all that the RCMP had in fact arrested Mr. Simard. The Sûreté du Québec officers did so, but not Constable Desautels.

With respect to complaint number 4, and the allegation that there was a threat of violence in order to obtain the papers unlawfully, there are two contradictory versions. Clearly, according to Constable Desautels' testimony, a police officer cannot drive while wearing a nightstick on his or her belt without it being a hindrance. He must therefore place it in a designated location inside the vehicle and, when he gets out, must insert it in its sheath. So Mr. Simard was clearly mistaken when he claims that the constable acted in a menacing manner by handling his police nightstick.

With respect to complaint number 5, concerning the abuse of power, Mr. Morin replied that Constable Desautels had simply followed the instruction he had received in Regina and that he firmly believed that members of the RCMP, who are peace officers, may administer all laws across Canada.

He did not agree with the interpretation given by Mr. Simard, who said that constables should know, by reading sections 17 of the Regulations and 20 of the Act, that it is open to them to enforce law and order only in the provinces and municipalities with which a contract has been entered into under section 20.

When asked by the Commission to inform it of the decisions of the Supreme Court on the distinction to be made between unlawful arrest and unlawful detention, Mr. Morin identified the decision in Therens.

On this point, the Commission wished to have Mr. Morin clarify whether, in his opinion, Mr. Simard had been detained. Counsel replied that he had. And, the Commission continued, does a person who is detained have the right to be informed of his right to counsel? Mr. Morin replied that he did.

When asked to present her submissions to the Commission, Ms Provost, representing the Attorney General of Quebec, referred the Commission to Exhibits P-10 and P-11 and stated that she was satisfied with these admissions.

Mr. Simard was invited to reply.

First, Mr. Simard alluded to a decision of the Supreme Court, R. v. Schmautz, which is catalogued in Jurisprudence Expresse as No. 90-484, in which detention within the meaning of section 10 of the Canadian Charter of Rights and Freedoms is defined.

Mr. Simard also wanted to clarify what he was alleged to have testified with respect to the presence of three Sûreté du Québec vehicles at the scene of his detention. He stated that his testimony had been that he had the impression that two or three SQ vehicles had arrived, but he knew that only one had remained on the scene.

He further noted that he was unable to see how he could have complained to the Sûreté du Québec officers about the conduct of Constable Desautels,

when they had placed him under arrest. He could not perceive them as saviours, but rather as aggressors. He added [Translation], "I defy anyone to complain to his aggressor while he is under arrest which he believes to be unjustified." He joined issue with Mr. Carbonneau as to his conclusions concerning Mr. Dennoncourt's calculations. According to him, it was clear that Constable Desautels's testimony could not be a proper reflection of reality.

Finally, it was Mr. Noël's turn to present his comments, as counsel to the Commission.

First, Mr. Noël drew the Commission's attention to the reply given by Constable Desautels to the question by the Chairman as to his impression that there might have been a hit and run. According to Mr. Noël, it is important in weighing the evidence to review how the constable perceived the situation.

Mr. Noël also asked the Commission to consider very seriously Mr. Carbonneau's comments on the issue of holding two investigations into the same incident. Counsel also stated his concerns about the fact that counsel for the appropriate officer had, the day before the hearing was to resume, provided significant admissions which put the entire internal investigation into question. Mr. Noël added that one might think that if these admissions had been known at the time of the internal investigation, the investigators' conclusions might have been quite different. Accordingly, when the Commission comes to make its recommendations, it should perhaps divide them in two. Some might be directed to the appropriate officer and the others could deal with the complaint and the effects of the complaint.

According to Mr. Noël, it was important to note that the situation deserved to be clarified and that this could be done by having agreements signed between the competent authorities of the Government of Quebec, and of Ontario if necessary, and the federal government.

Mr. L'Espérance added that it is important to note that while the members of the RCMP clearly cannot enforce the Highway Safety Code, they may on the other hand exercise the powers conferred on them at common law.

The Commission's decision should apply only to cases which are identical to the complaints which are now before it. The Commission ought not to enter into a discussion of other possibilities. The Attorney General of Canada considers that it is clear that the RCMP has no jurisdiction to enforce the Highway Safety Code. However, the argument does not go beyond that.

V. CONCLUSION

The facts in this case are not very complex, although close examination might disclose numerous contradictory details and possibly lead us into indecision.

However, in the Commission's view, the outline of events describes a fact situation which may be summarized as follows.

Mr. Simard was driving on Côte de Liesse Road. He was moving along at a good clip. The road is one he knows well. When he arrived at the junction where vehicles may access Côte de Liesse Road, traffic got heavier. Slightly ahead of him but to his right, Constable Desautels was at

the wheel of his patrol car. He attempted to get into the flow of traffic on Côte de Liesse Road. He was able to do so only with some difficulty since Mr. Simard was right behind him, but diagonally. Mr. Simard saw no turn signals on the patrol vehicle and so did not brake. Constable Desautels therefore had to brake and wait for Mr. Simard's car to pass.

At this point in the events, we have two clear reactions. Mr. Simard, who is a lawyer, believed that the RCMP had no jurisdiction on Côte de Liesse Road. He therefore continued to drive at a speed which, he admitted, exceeded the limit. Seeing that the BMW was moving at a speed that exceeded the permitted speed, the constable decided to follow it. Mr. Simard proceeded, still at the same speed, which exceeded the speed limit. The constable then activated his rotating lights and the two vehicles then took part in a sort of highway ballet. Mr. Simard was not certain that the constable was asking him to stop. He therefore tried to give way to him by motioning to him to pass, but the constable clearly indicated to him that it was he who was intended and motioned back to stop his vehicle.

The two vehicles stopped on a grassy area. Mr. Simard got out of his car, and the police officer did the same. Mr. Simard spoke to the constable and told him that he had no jurisdiction there on a provincial highway. When directed to give his papers to the constable, he was not prepared to do so since he remained convinced that the constable had no jurisdiction on provincial highways to enforce the provisions of the Highway Safety Code.

At this point in the incident, the Commission has no difficulty in imagining that the constable must have felt compelled to show a measure of firmness in order to convince Mr. Simard that he should comply with the request that had been made to him. Can shifting of position, a sharper look, and

perhaps an adjustment to the police nightstick in the sheath be considered improper? That depends; we shall discuss it later.

In any event, the papers were handed over and Mr. Simard was forced to wait for ten or fifteen minutes, until a Sûreté du Québec patrol vehicle arrived on the scene. Whether two or three vehicles arrived and just one stayed, or on the contrary only one arrived, is really not of much significance. We might imagine that at that point Mr. Simard was somewhat shaken and perhaps even starting to lose his temper. It is an easy thing to exaggerate at moments like that, but it does not indicate bad faith.

One thing for certain is that Mr. Simard was invited to sit in the rear of the SQ patrol vehicle and was told that he was under arrest for refusing to comply with the orders of the police. He was also informed that he was being arrested for speeding.

When the SQ officers advised Mr. Simard that he was under arrest they recited the usual formula to inform him of his rights. He then told the officers that he was a lawyer himself. Shortly afterward, Mr. Simard was released.

What must we conclude from this description of the facts, as ultimately seen by the Commission?

First, that Mr. Simard believed he was entirely within his rights not to let the patrol vehicle pull in, it being slightly ahead of him and to his right, and wanting to get into traffic on Côte de Liesse Road. He was convinced that the RCMP had no jurisdiction on that territory, and thus that his action would have no consequence. Constable Desautels had the impression that

this driver was leaving the scene of an accident. The Commission saw nothing in the evidence which would permit us to conclude that the constable had reasonable grounds to believe that there had been a hit and run or that Constable Desautels had been asked to give assistance to the Sûreté du Québec.

It is therefore in light of these facts that the Commission must make its findings on each of the complaints submitted by Mr. Simard in his complaint letter to the RCMP dated July 20, 1989.

A. Dangerous and careless driving

It does not appear to the Commission, in view of the facts narrated by both sides, that Constable Desautels was driving in a dangerous or careless manner, if we consider what he was doing. He was following Mr. Simard's vehicle which, by Mr. Simard's own admission, was exceeding the permitted speed limit. To go from this and say that a police officer who does what he did was driving in a dangerous or careless manner is quite a leap. This allegation is therefore not upheld by the Commission.

B. Unlawful arrest

The Commission does not believe that this was an arrest. The courts have described the expression "arrest" as implying somewhat more than stopping a person in a vehicle which is speeding on a highway. On this point see, inter alia, Regina v O'Donnell (1982), 3 CCC 333 at page 350. Rather, the Commission believes that Mr. Simard was detained by Constable Desautels and was arrested by the Sûreté du Québec officers.

C. Unlawful detention

In R. v. Schmautz, [1990] 1 SCR 398, Gonthier J., for the Supreme Court, examined recent decisions on the issue of what constitutes detention. At page 407, he referred on this point to the words of LeDain J. in Therens, [1985] 1 SCR 613, and more specifically at pages 641 and 642:

> In its use of the word "detention", s. 10 of the Charter is directed to a restraint of liberty other than arrest in which a person may reasonably require the assistance of counsel but might be prevented or impeded from retaining and instructing counsel without delay but for the constitutional guarantee.
>
> In Chromiak this Court held that detention connotes "some form of compulsory constraint". There can be no doubt that there must be some form of compulsion or coercion to constitute an interference with liberty or freedom of action that amounts to a detention within the meaning of s. 10 of the Charter. The issue, as I see it, is whether that compulsion need be of a physical character, or whether it may also be a compulsion of a psychological or mental nature which inhibits the will as effectively as the application, or threat of application, of physical force. The issue is whether a person who is the subject of a demand or direction by a police officer or other agent of the state may reasonably regard himself or herself as free to refuse to comply.

Further in Schmautz, at page 409, Gonthier J. stated:

> In the Therens case, it was said, at p. 644, that "[d]etention may be effected without the application or threat of application of physical restraint if the person concerned submits or

> acquiesces in the deprivation of liberty and reasonably believes that the choice to do otherwise does not exist."
> (emphasis added)

In the view of the Commission, it is clear that Mr. Simard submitted or acquiesced in the deprivation of his liberty and reasonably believed that the choice to do otherwise did not exist.

He handed his papers over to Constable Desautels, and upon so doing he could no longer use his vehicle. But there is more. He was forced to wait for ten or fifteen minutes until a Sûreté du Québec vehicle arrived on the scene. He was therefore detained. This detention was unlawful by virtue of the fact that Constable Desautels had no jurisdiction to enforce the provisions of the Highway Safety Code, as was moreover admitted by the representative of the Attorney General of Canada and the representative of the RCMP appropriate officer.

D. Threat of violence in order to obtain unlawfully, and unlawfully obtaining, my driver's licence, my registration and insurance certificates

The Commission has not decided which of the two versions, Mr. Simard's or Constable Desautels', it should prefer. However, even if the Commission chose to adopt Mr. Simard's version, it could not avoid concluding that this action was intended to prevent the situation from becoming more serious. Tempers were running high, and above all had to be prevented from getting hotter. Threat of violence? The Commission believes rather that it was a demonstration of firmness, if the gesture did take place.

As to the rest of the complaint, it is self-evident that if the constable did not have jurisdiction to enforce the provisions of the Highway Safety Code in the circumstances of the case, he also did not have the authority to ask Mr. Simard for his driver's licence, certificate of registration or insurance certificate.

E. Abuse of power

The concept of abuse of power was considered in the comments of René Dussault and Louis Borgeat in their Traité de droit administratif, volume III, page 917:

[Translation]

> The basis for a public officer's activity is found in the statute or regulations. Unlike civil law, where capacity is the rule, public law presupposes the incapacity of officers governed by it: a public officer can do nothing except what he or she is authorized by law to do. Accordingly, the officer must obey the legislative or regulatory provisions on which his power to act is based. If the officer exceeds such powers, the officer and his or her principals may be liable.
>
> The area of police activity gives rise to a variety of situations of this nature. With respect to arrest, seizure and detention, peace officers must comply with a very precise legal framework, and the courts will not hesitate to find them and their principals liable for any excess of power.

The Commission must ask whether, in the context of his jurisdiction, and given the fact that he unlawfully detained Mr. Simard and forced him to

hand over his papers to him, having no jurisdiction to do so, Constable Desautels committed an abuse of power amounting to an act of misconduct. Did he knowingly act in such a manner as to have acted in bad faith in the performance of his duties?

In our opinion, with respect to conduct, the Commission must make adverse findings only if it is convinced that the member of the RCMP acted in bad faith.

In the circumstances of this case, it is clear that Constable Desautels believed that he was entitled to stop a driver who was speeding on a provincial highway. Constable Desautels, together with the division representative, Mr. Gilbert, explained to us that in their training at the academy in Regina they had learned that, as a general rule, police officers have jurisdiction throughout Canada to enforce all provincial or other legislation in the country. There was therefore no bad faith. On the other hand, the Commission is not entirely convinced that Constable Desautels was not overly zealous in the circumstances. It seems to us that if Mr. Simard had not been as tenacious as he was when the police officer attempted to get into traffic on Côte de Liesse Road, he would not have found himself subject to the kind of surveillance and pursuit undertaken by Constable Desautels. Having said this, the Commission will not pursue this line of thought.

Two final comments:

In the Commission's view, it is very important that a "national" police force, that is, a force that is required to work throughout the country in various jurisdictions with varying powers, which may be conferred by the provinces where they perform their duties, be perfectly aware what the limits of its members' jurisdiction are where they perform these duties. Lacunae in this area make the force vulnerable to criticism and may even make it and its members liable.

While Constable Desautels did unlawfully detain Mr. Simard, it must also be noted that in so doing he did not appear to respect Mr. Simard's rights by informing him of his right to consult a lawyer, in view of the fact that he had been detained. The case law is clear on this point.

VI. RECOMMENDATIONS

That Constable Desautels and the RCMP apologize to Mr. Simard.

That the RCMP advise its members of the legal situation which prevails in Quebec, that is, that while members of the RCMP are peace officers in Quebec, specifically in respect of the Highway Safety Code, they do not have jurisdiction to enforce provincial legislation unless there is a formal agreement with the provincial authorities.

That the RCMP inform its members of the legal situation which prevails in any other province, territory or municipality where there is no contractual agreement between such province, territory or municipality and the federal government for the use of the services of the RCMP in such jurisdictions.

That the RCMP inform the Commission of all corrective measures that it may take in order that the Commission Chairman may prepare the Commission's annual report, in accordance with section 45.34 of the Act.

Fernand Simard

Gisèle Côté-Harper, Q.C.

Judith MacPherson

APPENDIX II

Royal Canadian Mounted Police

Gendarmerie royale du Canada

N.D. Inkster
Commissioner Le Commissaire

June 18, 1991

Dr. Richard Gosse, Q.C.
Chairman
RCMP Public Complaints Commission
P.O. Box 3423
Station "D"
Ottawa, Ontario
K1P 6L4

Dear Doctor Gosse:

I have carefully reviewed the PCC Public Hearing report and relevant material relating to the complaints of Mr. André Simard of Montreal, Quebec, references 2000-PCC-89520 and 89G-3965.

Your conclusions have been examined and the following constitutes notice of the action I will be taking on the findings and recommendations.

With respect to the allegation of dangerous and careless driving on the part of Cst. Paul Emile Desautels, I share the finding that this allegation cannot be supported.

In regards to the allegation of unlawful arrest, I find no evidence to suggest that Cst. Desautels placed the complainant under arrest and therefore I agree with the finding that the complainant was detained by the member and was arrested by the S.Q. officers.

I note the Supreme Court recently examined the issue of what constitutes detention. In this case, detention was effected without the application of physical restraint and it is clear that the complainant submitted in the deprivation of his liberty and reasonably believed that the choice to do otherwise did not exist.

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1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

I accept the finding that the detention of the complainant by Cst. Desautels was unlawful in this instance as the member had no jurisdiction to enforce provincial statutes. I note this was admitted by counsel of the Attorney General of Canada and the representative of the Appropriate Officer.

Concerning the allegation of a threat of violence in order to obtain documentation from the complainant, I note the PCC believes that the gesture was a demonstration of firmness on the part of the member, if made at all. I admit I have great difficulty in understanding the alleged threat. The Appropriate Officer explained it well in his final report in that the night-stick is inserted into its holder only after the police officer gets out of the vehicle. During this movement, it is not inconceivable that adjustments are made to various pieces of equipment carried on the belt before approaching a person. Therefore, I have reason to believe that the member was in the process of adjusting the night-stick on his belt rather than making the alleged threat. I share the remaining finding, in that the member did not have jurisdiction to enforce Quebec provincial statutes and did not have authority to ask the complainant for documents in this circumstance.

In regards to the allegation of abuse of authority, I accept the finding that with respect to the member's conduct, no adverse findings came to light to indicate the member acted in bad faith. I note the member believed that he had jurisdiction and that he was entitled to stop a speeding car on a provincial road.

I accept recommendation 1, and I will instruct the C.O. "C" Division to ensure that a written apology is extended to the complainant. I will also instruct the C.O. "C" Division to ensure that Cst. Desautels is encouraged to apologize. However, the ultimate decision will be left with the member, as an ordered apology would not be meaningful.

I accept recommendation 2 and will instruct the Director, Enforcement Services to examine and review this issue and subsequently inform all members of the Force of the legal situation which prevails in Quebec.

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As well, I accept recommendation 3, and will instruct the Director of Enforcement Services to examine and review this issue and subsequently inform all members of the legal situation which prevails in any other province, territory or municipality where there is no contractual agreement between such province, territory or municipality and the federal government for the use of the services of the Force in such jurisdictions.

Since the issues identified are all directly related to the complaint, I accept recommendation 4 and will inform the Chairman of the PCC of the corrective measures taken by the Force.

I thank you for your advice and look forward to receiving your final report.

Sincerely,

N.D. Kinkster
Commissioner